

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

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9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 January 2, 2019

17 10:06 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 HEARING re Notice of Agenda of Matters Scheduled for Hearing
2 on January 2, 2019 at 10:00 a.m.

3

4 HEARING re Notice of Hearing for Approval of Sale of Medium-
5 term Intercompany Notes to Cyrus Capital Partners L.P.

6 (related document(s)826)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 AKIN GUMP STRAUSS HAUER & FELD LLP

4 Attorneys for the Unsecured Creditors Committee

5 One Bryant Park

6 New York, NY 10036

7

8 BY: IRA S. DIZENGOFF

9 SARA L. BRAUNER

10

11 MILBANK, TWEED, HADLEY & MCCLOY LLP

12 Attorneys for Cyrus Capital

13 2029 Century Park East, 33rd Floor

14 Los Angeles, CA 90067

15

16 BY: ERIC REIMER

17 THOMAS R. KRELLER

18

19 SEYFARTH SHAW LLP

20 Attorneys for Wilmington Trust National Association, as

21 Indenture Trustee and Collateral Agent

22 620 Eighth Avenue

23 New York, NY 10018

24

25 BY: EDWARD M. FOX

1 WEIL, GOTSHAL & MANGES LLP

2 Attorneys for the Debtors

3 767 Fifth Avenue

4 New York, NY 10153

5

6 BY: JACQUELINE MARCUS

7 JESSIE B. MISHKIN

8

9 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

10 Attorneys for DIP ABL Agent

11 4 Times Square

12 New York, NY 10036

13

14 BY: SHANA A. ELBERG

15

16 ALSO PRESENT TELEPHONICALLY:

17 ARLENE R. ALVES

18 NEGISA BALLUKU

19 CLAIRE BOSTON

20 JONATHAN CHO

21 BRYAN M. CIMALA

22 TED A. DILLMAN

23 MAXIMILLIAN FERULLO

24 PATRICK FITZGERALD

25 KRISTOPHER M. HANSEN

1 TAYLOR B. HARRISON
2 VLADIMIR JELISAVIC
3 MATTHEW KOCH
4 NICHOLAS KRISLOVE
5 ZACHARY D. LANIER
6 ZACHARY D. LEVINE
7 TERESA LII
8 MICHAEL G. LINN
9 KATHERINE E. MASSEY
10 MICHAEL MITTELMAN
11 JASON M. PIERCE
12 GREGORY PLOTKO
13 STEVEN J. REISMAN
14 SARAH J. SALANIC
15 JASON B. SANJANA
16 JOHN F. SAUL
17 FREDRIC SOSNICK
18 CHRIS STAUBLE
19 BRAD SWEENEY
20 FOTEINI TELONI
21 JACQUELINE TRUDEAU
22 MEGAN WASSON
23 ALEC WILLIAMS
24 BEKIR YILMAZ
25 DAVID R. SYLBERBERG

P R O C E E D I N G S

THE COURT: Please be seated. Okay, good morning.

In re Sears Holding Corporation.

MS. MARCUS: Good morning, Your Honor, and happy new year. Jacqueline Marcus of Weil, Gotshal & Manges on behalf of the Debtors, Sears Holding Corporation and its affiliates.

We're here, Your Honor, as directed by the Court, as a follow up to the hearing that was held on December 20th regarding Omega's motion to enforce a November 19th sale order regarding the Debtors' sale of medium-term notes.

As directed by the Court, on December 21st, we filed and served a notice of hearing for approval of sale of medium-term intercompany notes to Cyrus Capital Partners L.P.; that was at ECF #1396. We attached the form of the no purchase agreement and specifically highlighted the Sears Re lockup provision, and those established an objection deadline of December 31st at 4:00 p.m.

As reflected on the agenda, Cyrus filed the response, and last night, the official committee of unsecured creditors filed a reservation of rights. The Debtors do not seek any objections nor competing bids for the MTNs.

The Court may be puzzled as to why there were no offers for the MTNs, given all the statements that were made

1 over the last year. The Debtors' understanding is that
2 certain of the parties, perhaps all of the parties, perhaps
3 voted on the credit default swaps, have entered into
4 settlements with Cyrus, which Cyrus described in its
5 response as de-risking transactions.

6 While we understand that they were hoping credit
7 default swap positions between the parties and that it may
8 have made business sense to the parties to reduce their
9 exposure, it is troubling that that occurred during a Court-
10 sanctioned auction process, so we wanted to bring that to
11 the Court's attention. (indiscernible), Your Honor,
12 Paragraph 9, the sale order specifically preserves rights of
13 the parties to contest the (indiscernible) provisions of the
14 sale order.

15 From the Debtors' perspective, where we stand
16 today, is that we are left with an already consummated sale
17 to Cyrus as the only transaction on the table. To the
18 extent that the Court believes it's necessary, we would like
19 the Court to retroactively approve the lockup feature of the
20 Cyrus transaction, and deny whatever else may be left or may
21 remain in the motion.

22 THE COURT: Okay.

23 MR. DIZENGOFF: Good morning, Your Honor. Ira
24 Dizengoff, Akin Gump Strauss Hauer & Feld, on behalf of the
25 creditors committee. Happy new year.

1 THE COURT: Happy new year.

2 MR. DIZENGOFF: Your Honor, a couple of comments.

3 One, the committee is not opposed to the relief that's being
4 asked again. I rise to raise issues and concerns about the
5 integrity of the process. Two weeks ago, there were
6 multiple parties here that were clamoring for the MTNs. We
7 understand from the pleading that Cyrus filed and from other
8 -- talking to other participants, that they were de-risking
9 transactions, market transactions, that took place between
10 December 20th and then when the bid deadline was; I think it
11 was the 28th or so.

12 As a result, there were no bids that were received
13 from the MTNs. And I think that the imprint of your
14 dialogue with the parties at the December 20th hearing was,
15 if you were going to object, you might as well put in a bid
16 so we can actually evaluate that at the time.

17 So something happened here; we're not quite sure
18 exactly what happened. But we're going to investigate the
19 facts of what transpired and figure out if there was
20 something improper in light of issues regarding collusion
21 and bids and the like, whether parties were inclined not to
22 bid for some reasons other than something as appropriate.

23 So we don't oppose the relief. We're okay with it
24 being entered. There is a robust reservation of rights. We
25 intend to investigate what transpired. We'll talk to all

1 those market participants. We understand that that
2 consortium, the people who were talking to you on the 20th,
3 it was about nine participants. We'll talk to them and
4 understand what the facts are. If it's something
5 inappropriate, we'll come back to you and talk to you about
6 that at the time.

7 But, otherwise, we want to just raise these
8 concerns with the Court and let you know that we're going to
9 look into it further.

10 THE COURT: Okay, thank you.

11 MR. DIZENGOFF: Thank you, Your Honor.

12 THE COURT: Does Cyrus have anything to say?

13 MR. KRELLER: We have nothing to add to the Court
14 today.

15 THE COURT: Well, I have a question. What is a
16 de-risking transaction?

17 MR. KRELLER: Your Honor, Thomas Kreller, Milbank,
18 Tweed, Hadley & McCoy, on behalf of Cyrus Capital.

19 Your Honor, as you know from the prior proceedings
20 on this, Cyrus had sold protection in to the CDS market, and
21 that protection were -- was in the form of contracts that
22 are granted to the folks who bought that protection in
23 (indiscernible), the de-risking transaction.

24 When the exposure that Cyrus had in that market
25 continued to potentially grow with developments such as the

1 listing of the second lien debt, as deliverables into the
2 CDS auction. There are proposed rules changes sitting with
3 the determinations committee that further expose Cyrus on
4 that position.

5 And so, again, in open market transactions and
6 inbound offers into Cyrus some of the CDS contracts were
7 settled now. There were no MTNs that were sold that had
8 anything to do with those transactions. It was purely a
9 settlement of CDS obligations and rights between parties in
10 the market through corporate intermediaries.

11 THE COURT: I'm sorry. I talked over you. What's
12 your last -- your last sentence; would you say that again?

13 MR. KRELLER: I said through open market
14 transactions, through corporate dealer intermediaries.

15 THE COURT: Okay. So the other side or any of
16 this affiliates made any offer or promise or favor or
17 otherwise regarding consideration or want to withdraw a bid
18 from MTNs?

19 MR. KRELLER: Never.

20 THE COURT: Or for acting as an agent for a group
21 to make a bid for MTNs?

22 MR. KRELLER: No, Your Honor.

23 THE COURT: Okay.

24 MR. KRELLER: The only transactions that were made
25 were CDS transactions, the settlement of CDS contracts

1 through our own dealers who Cyrus didn't cap visibility into
2 what's on the other side. And the transactions that were
3 settled were actually through offers presented to Cyrus from
4 the market through its dealer.

5 THE COURT: All right, thank you.

6 MR. KRELLER: Thank you.

7 THE COURT: I will approve that -- the remaining
8 portion of the Cyrus transaction that I have not yet
9 approved, which is the colloquially speaking "lockup" of
10 Sears Re's MTNs. That was an integral aspect of the
11 transaction, which had been noticed for a hearing last
12 month, and which was challenged as part of the objection by
13 Omega Advisors, Inc. and Och-Ziff Capital.

14 At the last hearing, I had overruled all of the
15 aspects of that objection, except for the portion of the
16 objection that contended that the Sears Re lockup had not
17 been approved under 363(b); and, therefore, I couldn't
18 approve the overall transaction to which it was an integral
19 party.

20 The record reflects that parties-in-interest had
21 sufficient notice to submit a complete transaction, if they
22 wished to, that would include or be based upon the knowledge
23 of the right to include the Sears Re lockup, but they have
24 not done so.

25 The adequate consideration provided by Cyrus under

1 its current proposal is clearly the highest and best offer
2 on the table. So I will approve the offer in full,
3 including the Sears Re lockup portion of it, and overrule
4 the whole remaining part of the Och-Ziff objection to modify
5 ruling from last week, and so the parties go ahead and close
6 that transaction.

7 MS. MARCUS: Thank you, Your Honor. We'll submit
8 an order on notice to the parties taking part.

9 THE COURT: All right. The only other thing I'll
10 say is directly before me, including the representation by
11 Cyrus's counsel, is what I have today on record before me.

12 It clearly struck me as odd, as well as the
13 Debtors, that a financial institution or it could be
14 represented or be an agent for a consortium of other
15 financial institutions, withdrew a bid that they had proudly
16 announced at the last hearing before the deadline to submit
17 such a bid officially, and that the objectors also including
18 (indiscernible) would be interested in the MTNs.

19 So my good faith finding is nearly a two and a
20 half month record before me and is still subject to the
21 reservation by the order.

22 MS. MARCUS: Thank you, Your Honor.

23 THE COURT: Okay, thank you. So as far as the
24 order is concerned, I've already entered an order approving
25 the auction. But I think I need another order that includes

1 not only the Cyrus deal, but the granting of that portion of
2 the -- I'm sorry -- the granting of Debtors' request for
3 approval of that portion of the deal approving the Sears Re
4 buy out.

5 MS. MARCUS: When do you think Your Honor would be
6 a denial of the Omega motion.

7 THE COURT: Right.

8 MS. MARCUS: Which you indicate in your ruling on
9 the 20th, but we didn't document, and then we would also
10 include the retroactive group (indiscernible).

11 THE COURT: Right, with a reference to the notice
12 that you sent out.

13 MS. MARCUS: Right.

14 THE COURT: Absolutely. Okay, very well. Thank
15 you.

16 MS. MARCUS: Thank you, Your Honor.

17 (Whereupon these proceedings were concluded at
18 10:17 AM)

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Objection To Modify Ruling Overruled

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
Hyde
DN: cn=Sonya Ledanski Hyde, o, ou,
email=digital@veritext.com, c=US
Date: 2019.01.04 15:42:40 -05'00'

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: January 4, 2019

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